BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

FLOYD D. MOHLER	}
Claimant VS.	Docket No. 102 652
CONSTAR INTERNATIONAL Respondent) Docket No. 193,653
AND	{
TRAVELERS INSURANCE COMPANY Insurance Carrier	

ORDER

Respondent appeals from a Preliminary Order rendered by Administrative Law Judge Alvin E. Witwer on July 10, 1995.

ISSUES

Respondent contends the Administrative Law Judge exceeded his jurisdiction in granting preliminary benefits because the evidence does not establish accidental injury arising out of and in the course of employment and does not establish that claimant made timely written claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Boards finds that the Preliminary Order should be reversed. The Appeals Board finds claimant has not established a timely written claim. Claimant alleges injury on May 24, 1993. The evidence indicates that he was taken from work to Bethany Medical Center Emergency Room by ambulance on that date after he was found slumped down on the ground. He returned to work the same day.

Claimant testified that soon after the injury, he completed an accident report. However, several of respondent's employees testified they would have been in the line of persons to have received such a report and none was given to them. No accident report was introduced into evidence. The Appeals Board finds, from the record as a whole, claimant has not proven by a preponderance of the credible evidence that he filed an accident report or that such accident report constituted a written claim.

The record does establish that a written claim for compensation, on a Missouri form, was served upon the respondent no later than July 28, 1994. The record does not reflect

an employer's report of accident was filed with the Director and, therefore, claimant would have a year following the date of accident or the last medical treatment within which to file a written claim for compensation. The Administrative Law Judge relied upon this Order to find that written claim was filed timely. The Order implies that medical treatment provided claimant from May 23, 1993 through August 1993 was authorized medical treatment which extended the time for filing a written claim. However, a review of the record convinces the Appeals Board that after his emergency room visit claimant knew additional medical treatment was to be on his own, with his own health insurance carrier, not an authorized workers compensation benefit. Procurement of treatment on his own is not equivalent to payment of compensation and does not extend the time for filing written claim. Solorio v. Wilson Co., 161 Kan. 518, 169 P.2d 822 (1946).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Order of Administrative Law Judge Alvin E. Witwer dated July 10, 1995 should be, and is hereby, reversed.

IT IS SO ORDERED.
Dated this day of September, 1995.
BOARD MEMBER
BOARD MEMBER
BOAND WEWBEN
BOARD MEMBER

c: James E. Martin, Overland Park, Kansas J. Donald Lysaught, Jr., Kansas City, Kansas Alvn E. Witwer, Administrative Law Judge Philip S. Harness, Director